

ORIGINAL

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District	Northern District of Texas, Fort Worth Division
Name (under which you were convicted): Stephan Hamilton		Docket or Case No.: 4:12-cr-00249-0-1	
Place of Confinement: FCI Texarkana, P.O. Box 7000, Texarkana, TX 75505		Prisoner No.: 45442-177	
UNITED STATES OF AMERICA		Movant (include name under which convicted)	
V.		STEPHAN HAMILTON	

MOTION

4-16CV-122-0

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court
Northern District of Texas
Fort Worth Division

(b) Criminal docket or case number (if you know): 4:12-cr-00249-0-1

2. (a) Date of the judgment of conviction (if you know): 4/9/2014

(b) Date of sentencing: 3/3/2014

3. Length of sentence: 240 months imprisonment

4. Nature of crime (all counts):

Hamilton was charged with Count One (1) of Conspiracy to Possess with Intent to Distribute Methamphetamine, in violation of 21 U.S.C. § 846.

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED FEB 16 2016 CLERK, U.S. DISTRICT COURT By <u>SN 10143</u> Deputy

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒

No ☐

9. If you did appeal, answer the following:

- (a) Name of court: United States Court of Appeals for the Fifth Circuit Court
- (b) Docket or case number (if you know): 14-10400
- (c) Result: Affirmed
- (d) Date of result (if you know): 12/10/2014
- (e) Citation to the case (if you know): USA v. Hamilton (No.14-10400) (5th Cir. December 10, 2014)
- (f) Grounds raised:
1. Whether Hamilton's sentence was procedurally unreasonable when there was an arithmetic mistake that inflated the offense level by two levels.
2. Whether Hamilton's sentence was substantively unreasonable when the District Court refused the prosecutor's requested 5K motion, and instead imposed the statutory maximum.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): N/A
- (2) Result: N/A
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): N/A
- (5) Grounds raised:
- N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: N/A
- (2) Docket or case number (if you know): N/A
- (3) Date of filing (if you know): _____
- (4) Nature of the proceeding: N/A
- (5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know):

(4) Nature of the proceeding: N/A

(5) Grounds raised:

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

-
12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective Assistance of Pretrial Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Pretrial counsel's failure to:

- (1) Conduct an adequate and independent pretrial investigation;
- (2) File any substantive pretrial motions; and
- (3) Communicate with Harris and inform him of the relevant circumstances and likely consequences of pleading guilty as opposed to proceeding to trial deprived Hamilton of effective assistance of pretrial counsel under the Sixth Amendment to the Constitution of the United States.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel are properly raised in a 28 U.S.C. § 2255 proceeding.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND TWO: Ineffective Assistance of Sentencing Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Sentencing counsel's failure to:

- (1) Review, discuss and explain the PSR with Hamilton prior to the sentencing hearing; and
- (2) Argue for mitigation of punishment; and
- (3) Object to Hamilton's sentence being substantively unreasonable deprived him of effective assistance of sentencing counsel and a fair and just sentence.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND THREE: Ineffective Assistance of Appellate Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Appellate counsel's failure to:

(1) Communicate with Harris regarding his direct appeal;

(2) Permit Hamilton to participate in his appeal;

(3) Raise stronger issues, which were available and ripe for disposition, instead of the two weak issues raised by his attorney; and

(4) Adequately brief the substantively unreasonable sentence issue on appeal deprived Hamilton of effective assistance of appellate counsel and a fair and meaningful appellate review.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel are properly raised in a 28 U.S.C. § 2255 proceeding.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:
N/A

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
N/A

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Claims of ineffective assistance of counsel are properly raised in a 28 U.S.C. § 2255 proceeding.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

Christopher Curtis, FPD, 819 Taylor Street, Room 9A10, Fort Worth, Texas 96102

(b) At the arraignment and plea:

Christopher Curtis, FPD, 819 Taylor Street, Room 9A10, Fort Worth, Texas 96102

(c) At the trial:

N/A

(d) At sentencing:

John W. Stickels, Stickels & Associates P.C., P.O. Box 121431, Arlington, TX 76012.

(e) On appeal:

Seth Kretzer, 440 Louisiana Street, Suite 200, Houston, Texas 77002

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

N/A

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, Hamilton respectfully requests that the Court grant the following relief:

Vacate his conviction and sentence to start anew; alternatively, grant an Evidentiary hearing to further prove his grounds set forth above, resolve facts in dispute, in and out of the record, expand an incomplete record or any other relief to which this Court deems that he may be entitled.

Respectfully submitted,

/s/ Stephan Hamilton

Stephan Hamilton

Reg. No. 45442-177

FCI Texarkana

Federal Correctional Institution

P.O. Box 7000

Texarkana, TX 75505

Appearing *Pro se*

DECLARATION OF STEPHAN HAMILTON

I, Stephan Hamilton, declarant herein, declare and attest to the fact in the above and foregoing Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody to be true and correct to the best of my knowledge under the penalty of perjury pursuant to 28 U.S.C. § 1746.

Dated: February 15, 2016

/s/ Stephan Hamilton

Stephan Hamilton

Stephan Hamilton
Reg. No. 45442-177
FCI Texarkana
Federal Correctional Institution
P.O. Box 7000
Texarkana, TX 75505

February 15, 2016

Clerk, U. S. District Court
Northern District of Texas
Fort Worth Division
501 West 10th Street, Room 310
Fort Worth, TX 76102

RE: *Stephan Hamilton v. United States*
Crim No. 4:12-cr-00249-0-1
Civil No. 4:16-cv-_____

To the Clerk of the Court:

Enclosed please find and accept for filing Movant's Motion under 28 U.S.C. § 2255 to Vacate, Set-aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 Motion"). A Memorandum of Law in Support of his § 2255 Motion will be forthcoming. Please submit this Motion to the Court.

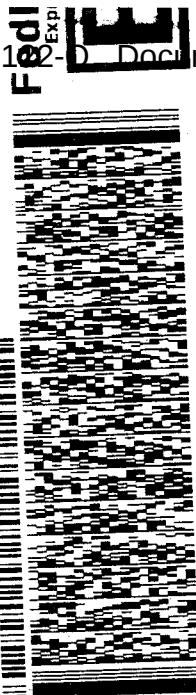
Thank you for your assistance in this matter.

Sincerely,

/s/Stephan Hamilton
Stephan Hamilton
Appearing *Pro Se*

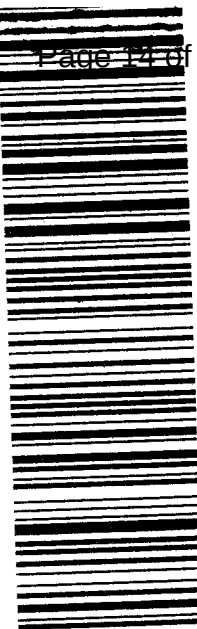
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FORT WORTH TX 76102REF: (817) 850-6600
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FORT WORTH, TEXAS
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CLERK OF COURTFedEx NEW Package
Express US Airbill

1 From

Date 2/15/2016

Sender's Name Stephan Thom

Company FCI Texarkana

Address Federal Corr. Inst P.O. Box 7000

City Texarkana State TX ZIP 75505

2 Your Internal Billing Reference

3 To

Recipient's Name Clerk of Court

Phone 817 850-6600

Company Clerk's U.S. District Court, WDTX Fort Worth

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2 or 3 Business Days

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Saturday Delivery NOT available.☐ FedEx 2Day
Second business afternoon.* Thursday shipments
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Someone at recipient's address
may sign for delivery. Fee applies.☐ Indirect Signature
If no one is available at recipient's
address, someone at a neighbor's
address may sign for delivery. For
residential deliveries only. Fee app.

Does this shipment contain dangerous goods?

One box must be checked.

☐ No ☐ Yes As per attached
Shipper's Declaration. ☐ Yes Shipper's Declaration
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